

Message Text

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INFO OCT-01 NEA-09 ISO-00 OES-05 ABF-01 FSE-00 COME-00 L-02

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DRAFTED BY: DHEW/ASH/OIH:LAVOGEL

APPROVED BY: OES/SCI/BMP:MSBEAUBIEN

NEA/INS:BBROWN INFO

OES/SCI/BMP:AERICHMOND INFO

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P 282135Z FEB 75

FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI PRIORITY

UNCLAS STATE 045856

E.O. 11652: N/A

TAGS: TBIO, IN

SUBJECT: DHEW/SFCP DRAFT PROJECT AGREEMENT

REF: (A) STATE 244697, NOV 6, 1974; (B) NEW DELHI 17320,
DEC 31, 1974; (C) NEW DELHI 2365

1. DURING MEETING OF THE U.S.- INDIA SCIENCE AND TECHNOLOGY
SUBCOMMISSION, THE PATENT CLAUSE WAS DISCUSSED WITH GOPALAN
AND SINGH. DHEW REPRESENTATIVES INDICATED THEY SOMEWHAT
PERPLEXED BY PROPOSED NEW LANGUAGE PROPOSED REF B SINCE IT
WOULD PROVIDE INDIA WITH MORE LIMITED RIGHTS IN THIRD
COUNTRIES THAN HAD BEEN AGREED TO BY U.S. IN REVISED VERSION OF
PATENT CLAUSE TRANSMITTED REF A.

2. DHEW INDICATED THAT LANGUAGE REF B ACCEPTABLE WITH THE
ADDITION OF THE FOLLOWING PHRASE TO PARA 3:

"SUBJECT TO A NONEXCLUSIVE NONTRANSFERABLE PAID-UP LICENSE
TO THE OTHER COUNTRY (INDIA AND THE U.S.A.) TO MAKE, USE AND
SELL, SUCH INVENTIONS IN SUCH COUNTRIES AND TO AUTHORIZE
OTHERS TO DO SO ON ITS BEHELF".

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3. WITH THE ABOVE REVISION, THE FULL CLAUSE WOULD READ
AS FOLLOWS:

A. "ALL INVENTIONS CONCEIVED OR FIRST ACTUALLY REDUCED
TO PRACTICE IN PERFORMANCE OF THE INVESTIGATIONS
EITHER BY ANY INDIVIDUAL OR GROUP OF WORKERS CONNECTED
WITH THE PROJECT SHALL BE REPORTED BY THE INDIAN
COLLABORATING INSTITUTION TO THE GOVERNMENT OF INDIA
WHICH WILL COMMUNICATE THE INVENTION TO THE GOVERNMENT
OF THE U.S.A."

B. "THE INDIAN COLLABORATING INSTITUTION WILL HAVE
PATENT RIGHTS IN SUCH INVENTIONS IN INDIA. SIMILAR-
LY, THE U.S. COLLABORATING INSTITUTION WILL HAVE
PATENT RIGHTS IN THE U.S.A."

C. "THE OWNERSHIP AND MANNER OF DISPOSITION OF ALL RIGHTS
IN SUCH INVENTIONS IN ALL COUNTRIES OTHER THAN INDIA
AND THE U.S.A. SHALL BE FOR DETERMINATION BY THE
GOVERNMENT OF INDIA AND THE GOVERNMENT OF THE U.S.A.
AND ANY PATENTS THAT MAY BE OBTAINED IN SUCH OTHER
COUNTRIES MAY BE SECURED AND HELD JOINTLY BY INDIA
AND THE U.S.A. IF EITHER THE GOVERNMENT OF INDIA OR
THE GOVERNMENT OF THE U.S.A. IS NOT INTERESTED IN
OBTAINING PATENTS IN ANY PARTICULAR COUNTRY, THE
GOVERNMENT OF THE OTHER COUNTRY WILL BE FREE TO TAKE
INDEPENDENT PATENTS IN SUCH COUNTRIES SUBJECT TO A
NONEXCLUSIVE NONTRANSFERABLE PAID-UP LICENSE TO THE
OTHER COUNTRY (INDIA OR THE UNITED STATES) TO
MAKE, USE AND SUCH INVENTIONS IN SUCH COUNTRIES AND
TO AUTHORIZE OTHERS TO DO SO ON ITS BEHALF".

4. FYI. DHEW PATENT COUNSEL HAS INDICATED JOINT PATENTS
CAN PRESENT PROBLEMS, MANY UNKNOWN, AND BELIEVES OVER LONG
HAUL IT BEST NOT TO ENTER INTO THIS TYPE ARRANGEMENT.
LANGUAGE TRANSMITTED REF A IS PREFERRED. WOULD
APPRECIATE KNOWING INDIANS' PROBLEMS WITH LANGUAGE REF A.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, SCIENTIFIC COOPERATION, MEDICAL SCIENCE
Control Number: n/a
Copy: SINGLE
Draft Date: 28 FEB 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE045856
Document Source: CORE
Document Unique ID: 00
Drafter: DHEW/ASH/OIH:LAVOGEL
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750071-0979
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t1975021/aaaaawe.tel
Line Count: 98
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN HEW
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 75 STATE 244697, 75 NOV 6, 75 1974, 75 NEW DELHI 17320
Review Action: RELEASED, APPROVED
Review Authority: ElyME
Review Comment: n/a
Review Content Flags:
Review Date: 30 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <30 MAY 2003 by BrownAM>; APPROVED <29 JAN 2004 by ElyME>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: DHEW/SFCP DRAFT PROJECT AGREEMENT
TAGS: TBIO, IN, US
To: NEW DELHI
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006